

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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| EDGAR Q. BULLOCK, III | : | CIVIL ACTION |
| | : | |
| v. | : | |
| | : | |
| BALIS & CO., INC., | : | |
| a/k/a GUY CARPENTER & CO., INC. | : | No. 99-748 |

MEMORANDUM AND ORDER

J. M. KELLY, J. **MARCH** , 2001

Presently before the Court is a Motion for Reconsideration filed by the Defendant, Balis & Co., Inc., a/k/a Guy Carpenter & Co., Inc. ("Balis"). The Plaintiff, Edgar Q. Bullock, III ("Bullock") filed suit in this Court alleging age and disability discrimination. Balis filed a Motion for Summary Judgment, which the Court granted in part and denied in part. Balis seeks reconsideration of the Court's denial of summary judgment on Bullock's disability discrimination claim. For the following reasons, Balis's motion is denied.

I. BACKGROUND

Accepting as true the evidence of the nonmoving party and all reasonable inferences that can be drawn therefrom, the facts of the case are as follows. Bullock began working at Balis as a reinsurance broker trainee on May 1, 1979, and was promptly promoted to treaty broker. Bullock received two more promotions, first to Assistant Secretary and then to Assistant Vice President. Bullock would eventually work for Balis as a treaty

broker for nearly eighteen years.

Bullock's employment record at Balis was far from spotless. Specifically, Bullock: (1) scheduled golf outings on business trips despite his supervisor's repeated requests that he not do so; (2) had his secretary prepare a professional memorandum that exceeded her scope of expertise; (3) failed to meet project deadlines; (4) intentionally delayed paying his company credit card in order to earn the interest on Balis's expense reimbursement; (5) regularly left work early whenever his supervisor was out of town; (6) would read the newspaper while at work; (7) took a vacation while one of his clients was going out of business; and (8) failed to bring in as much new business as his colleagues. Bullock had received several poor evaluations and was earning a salary that placed him at the low end of the pay scale for similarly situated employees at Balis. By September 23, 1996, Donald Johnston ("Johnston"), Bullock's supervisor, sent Bullock a letter informing him that his job was in jeopardy.

On February 27, 1997, Johnston sent a memorandum to Balis's President, William Fox ("Fox"). The memorandum stated that:

[Bullock] continues to make errors in submissions, does not prepare himself for client visits, fails to exercise self-control, and does not listen to clients

When given assignments it takes continuous follow-up to ensure he is doing what he should do.

. . . .

We discussed a possible role for him in

facultative [brokering], but this could pose a problem due to his inattention to detail. [Bullock] should be considered for reassignment, probation, or whether his future is in Balis & Co., Inc.

Johnston claims that, contemporaneously with his writing this memorandum, he met with Fox and the two agreed to fire Bullock. Bullock was still in Balis's employ, however, by March 17, 1997. On that day, Bullock requested a transfer to a brokering team not supervised by Johnston. On March 21, 1997, Fox met with Bullock and told him that a transfer was not possible because no other supervisor wanted to work with him. Bullock asked Fox for a second chance, and Fox gave Bullock the weekend to reconsider his future at Balis. Fox did not mention anything about having already decided to fire him.

After the weekend, on March 24, 1997, Bullock and Fox met a second time. Bullock suggested many possible reasons for his poor performance. Among the many explanations Bullock offered,¹ he stated that he might suffer from Attention Deficit Disorder ("ADD").² Although Bullock had not yet been diagnosed with ADD,

¹ Bullock claimed that he was afraid of making appointments with strangers over the phone and that his family's medical history of serious heart disease had caused him to adopt a relaxed attitude toward work. Later that day, Bullock told Johnston that he had begun "coasting" at work after a colleague received a promotion that he felt he deserved.

² Bullock has since been diagnosed as having Attention Deficit Hyperactivity Disorder ("ADHD"), which is related to ADD. ADHD is commonly characterized by a persistent pattern of unusually frequent and severe bouts of inattention, impulsiveness

he believed he might suffer from it because his son had just been diagnosed with the condition. Bullock requested a year of continued employment during which he could seek treatment. He also made this request because he claimed to work best "with his back against the wall."

Johnston and Fox then met outside of Bullock's presence. After a brief discussion, they returned and informed Bullock that he would be terminated. They explained that, pursuant to his contractual right to six months notice, he could remain at Balis for six months and receive salary and benefits for six months thereafter. They also stated that, at any time during the next six months, Johnston could reinstate Bullock if his performance dramatically improved.

A few days later, however, Fox changed his mind. On March 31, 1997, Fox told Bullock that he could not return to work, although his salary and benefits package would not be altered. Fox apparently believed that Bullock would not improve his performance. Fox also stated that it would be unproductive to have a terminated employee remain in the work environment.

After pursuing administrative remedies, Bullock filed suit against Balis on February 12, 1999. Bullock's Complaint originally contained five Counts. Counts I and II alleged age

or hyperactivity not commonly seen in those without the disorder.

and disability discrimination, respectively. Counts III, IV and V alleged violations of Pennsylvania law and intentional infliction of emotional distress. Balis filed a Motion to Dismiss on April 19, 1999. By Order of July 22, 1999, the Court dismissed Counts III, IV and V. Balis then filed a Motion for Summary Judgment on the remaining Counts of Bullock's Complaint. Although the Court granted summary judgment in favor of Balis on Bullock's age discrimination claim, it did not grant summary judgment on Bullock's disability discrimination claim. Balis filed a Motion for Reconsideration of that decision, which the Court will now consider.

II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 59(e) and Local Civil Rule 7.1(g) of the United States District Court for the Eastern District of Pennsylvania allow parties to file motions for reconsideration or amendment of a judgment. Courts should grant these motions sparingly, reserving them for instances when: (1) there has been an intervening change in controlling law; (2) new evidence has become available; or (3) there is a need to prevent manifest injustice or correct a clear error of law or fact. See, e.g., General Instrument Corp. v. Nu-Tek Electronics, 3 F. Supp. 2d 602, 606 (E.D. Pa. 1998), aff'd, 197 F.3d 83 (3d Cir. 1999); Environ Prods., Inc. v. Total Containment, Inc., 951 F. Supp. 57,

62 n.1 (E.D. Pa. 1996). Dissatisfaction with the Court's ruling is not a proper basis for reconsideration. Burger King Corp. v. New England Hood and Duct Cleaning Co., No. 98-3610, 2000 WL 133756 at *2 (E.D. Pa. Feb. 4, 2000).

In the context of a motion for summary judgment, which Balis asks the Court to reconsider, a defendant in an employment discrimination case may prevail in one of two ways. First, the defendant may show that the plaintiff can raise no genuine issue of fact as to one or more elements of his prima facie case. Spangle v. Valley Forge Sewer Auth., 839 F.2d 171, 173 (3d Cir. 1988). Second, the defendant may present a legitimate non-discriminatory reason for its actions and then show that the plaintiff can raise no genuine issue of material fact as to whether the proffered reason is a pretext for discrimination. Id. Stated conversely, if the plaintiff shows that such genuine issues of fact do exist, summary judgment is inappropriate.

III. DISCUSSION

Balis finds fault with three parts of the Court's Order of December 18, 2000. First, Balis argues that the Court erroneously found that Balis made the decision to fire Bullock after Bullock disclosed that he might have a disability. Second, Balis states that the Court improperly relied on that determination in finding that Bullock had established his prima

facie case and rebutted Balis's proffered legitimate non-discriminatory reason for firing him. Finally, Balis contends that the Court improperly analyzed Bullock's claim that he was regarded as disabled.

A. The Timing of Balis's Decision to Fire Bullock

Balis argues that it made the decision to fire Bullock nearly a month before he disclosed that he might have a disability. In support of this argument, Balis points to Johnston's memorandum of February 27, 1997, which recommended that Fox consider firing Bullock, and a contemporaneous conversation between Johnston and Fox during which they allegedly agreed to terminate Bullock. In its Memorandum and Order of December 11, 2000, however, the Court stated that Balis did not make the final decision to fire Bullock until after Bullock disclosed that he might have a disability. This determination was critical to the Court's ruling on Balis's Motion for Summary Judgment because the Court relied on it in determining that Bullock had established his prima facie case and rebutted Balis's proffered non-discriminatory reason for firing him. Balis suggests that this constitutes a clear error of fact because, based on the record in this case, it is clear beyond peradventure that Balis decided to fire Bullock before he disclosed his possible disability.

The Court disagrees. Although Bullock can point to no direct evidence that counters Balis's contention that Fox and Johnston orally agreed to fire him before his disclosure, Balis's own evidence demonstrates that the date of that decision remains in doubt. First, Bullock was never formally told he was going to be fired until March 24, 1997, the same day that he informed Balis that he might have a disability.³ If Fox and Johnston had indeed made the decision to fire Bullock in late February, they offer no explanation as to why they waited nearly a month to inform him of their decision, gave him the weekend to consider his future at Balis, or initially offered to reinstate him if his performance improved. Second, Johnston testified regarding his conversation with Fox that "I don't recall exactly when [Fox responded to the recommendation that we fire Bullock], whether it was [during] that meeting or at some subsequent date." Third, Johnston also testified that, at the March 24, 1997 meeting, "Fox suggested that [Bullock] be terminated" That Fox "suggested" terminating Bullock would imply that the idea was either new or had yet to be adopted. Finally, a memorandum written by Fox regarding his meetings with Bullock on March 21

³ Moreover, it could be argued that the ultimate decision to fire Bullock was not made until March 30, 1997, six days after his disclosure. At the March 24 meeting, Fox stated that, at any time during his six month period of probationary employment, Bullock could be reinstated if his performance dramatically improved. Not until March 30 did Fox declare that Bullock could not possibly be reinstated.

and 24 do not mention his alleged conversation with Johnston or indicate that Fox had already decided to fire Bullock before either meeting. Instead, the memorandum corroborate Bullock's story that he was, indeed, given a period of probationary employment because he worked best when "his back was against the wall." Fox's memorandum clearly states that "[Johnston] was willing to give [Bullock] another chance to prove himself provided there was a clear deadline. [Johnston] and I met with [Bullock] and agreed to his continued employment subject to" the conditions that he would be given notice of his termination, but that he would be reinstated if Johnston approved of his performance. A statement that Johnston was willing to give Bullock a second chance flies in the face of Balis's assertion that Johnston had earlier suggested firing him or that Fox had already agreed to do so.

At a minimum, there is a triable issue of fact on this point. The Court's statement that Balis had notice of Bullock's possible disability did not amount to a formal finding of fact, but rather was the result of considering the evidence in the light most favorable to the non-moving party, which the Court was required to do in resolving Balis's Motion for Summary Judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). The ultimate determination on this point remains the province of the jury. A jury could reasonably find, however, that the decision

to fire Bullock was not made until after his disclosure. The Court must therefore determine to what extent the timing of the decision may be used in establishing genuine issues of material fact regarding his prima facie case or Balis's legitimate non-discriminatory reason for firing him.

B. The Relevance of the Timing of the Decision to Fire Bullock

Balis argues that the temporal proximity of Bullock's disclosure of his disability and Balis's decision to fire him does not, in this case, establish genuine issues of material fact regarding Bullock's prima facie case and Balis's legitimate non-discriminatory reason for firing him. In support of its argument, Balis cites several cases. See, e.g., Moore v. J.B. Hunt Transp., Inc., 221 F.3d 944, 954 (7th Cir. 2000); Peyton v. Otis Elevator Co., 72 F. Supp. 2d 915, 918, 920 (N.D. Ill. 1999); Willmore v. American Atelier, Inc., 72 F. Supp. 2d 526, 529 (E.D. Pa. 1999); Rebarchek v. The Farmers Coop. Elevator and Mercantile Assoc., 60 F. Supp. 2d 1145, 1150 n.1, 1153 (D. Kan. 1999), aff'd 202 F.3d 282 (10th Cir. 2000); Robb v. Horizon Credit Union, 66 F. Supp. 2d 913, 920 (C.D. Ill. 1999); Bragg v. Tri Lite, Inc., No 97-1138, 1999 WL 965419, at *8 (N.D. Ill. Sept. 30, 1999). Balis concedes, however, that the "temporal nexus between disclosure and adverse employment action is [relevant]." Def.'s Mem. in Support of Mot. for Recons. at 14 n.8. Balis merely

argues that, "without substantially more, a plaintiff cannot survive summary judgment on that basis." Id.

Without addressing the subtleties of the specific legal issue raised here,⁴ the Court finds that the record in this case does contain "substantially more" evidence that establish genuine issues of material fact regarding Bullock's prima facie case and Balis's reason for firing him. Although the Court found the apparent timing of Balis's decision suspect, it did not, as Balis suggests, rely solely on the temporal proximity of it to Bullock's disclosure that he might have a disability. For example, in finding that Bullock had presented a genuine issue of material fact concerning his prima facie case, the Court stated that "[a] jury could infer that, upon learning that Bullock might have a disability, Balis reviewed his history of performance problems, considered it symptomatic of his ADD, and fired him because they regarded him as having a disability that substantially interfered with his ability to work." Order of December 18, 2000 at 13. Johnston's memorandum of February 27,

⁴ It should be noted that none of the cases cited by Balis stand for the proposition that the temporal proximity of notice of a disability and an adverse employment action is irrelevant. Indeed, several of the cases Balis cites are entirely inapposite. The most helpful case is Robb, which states that "fir[ing] an employee shortly after an illness does not by itself demonstrate that the employer must have regarded the employee as disabled." Robb, 66 F. Supp. 2d at 920. The Court agrees with that statement but, as explained below, finds that other evidence does exist on this record.

1997, which complained of Bullock's inattention to detail and impulsiveness, directly supports that inference because those are well known symptoms of the disorder Bullock disclosed. Although the Court did state that "the timing of the notice . . . call's Balis' decision to fire [Bullock] into question," the Court did not rely solely on that fact. Similarly, in finding that Bullock had presented a triable issue of fact concerning Balis's non-discriminatory reason for firing him, the Court stated that:

Although it could be inferred from this record that the decision to fire Bullock was imminent and inevitable, Bullock's promotions and tenure with the company, as well as Balis's seeming tolerance for his performance problems, could also lead a reasonable jury to infer that Balis would have allowed Bullock to remain in its employ had it not learned of his disability.

Order of December 18, 2000 at 18. Although the Court did rely in part of the timing of Balis's decision, stating that "the timing of Bullock's disclosure that he might have a disability is enough to call into question the motivation behind his firing," it also considered his long tenure with the company and Johnston's memorandum to Fox. Thus, it is not entirely accurate for Balis to state that "[w]ithout citing any . . . evidence in the record, the Court . . . concluded that, on [the] basis [of the timing of Bullock's disclosure] alone, plaintiff was entitled to have his ADA claim heard by a jury." Def.'s Mem. in Support of Mot. for Recons. at 14.

Indeed, several factors demonstrate that triable issues

exist on both of these points. Bullock worked as a treaty broker for nearly eighteen years despite frequent complaints about his inattention to detail and impulsiveness. Although Johnston authored a memorandum suggesting that those problems interfered with his ability to work as a reinsurance broker, a reasonable jury could find that Balis had not yet decided to fire Bullock. Bullock then disclosed to Balis that he might suffer from ADD. It is well known that ADD is characterized by inattention to detail and impulsiveness. Shortly thereafter, Balis informed Bullock that he would be terminated, but could be reinstated if his performance dramatically improved. A few days later, Fox determined that Bullock would never improve and that it would be counterproductive to have a terminated employee in the work environment, and consequently foreclosed any chance that Bullock could be reinstated.

On these facts, a jury could reasonably determine that Balis had adopted a permissive attitude towards Bullock's work deficiencies when it considered them merely motivational problems. Balis then learned that Bullock might have a disability, the manifestations of which dovetailed with Bullock's long history of performance problems. Balis could have then concluded that Bullock's medical condition would prevent him from ever improving and fired him. In other words, the facts of this case could lead a reasonable jury to infer that Balis fired

Bullock because it regarded him as disabled rather than unmotivated. Accordingly, Bullock has presented genuine issues of material fact regarding his prima facie case and Balis's non-discriminatory reason for firing him.

C. Whether Balis Regarded Bullock as Disabled

To defend Balis's Motion for Summary Judgment, Bullock must have presented, at a minimum, a genuine issue of material fact concerning each element of his prima facie case. The element of Bullock's prima facie case currently at issue is whether he was "disabled" as that term is defined within the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12131-12134 (1994). A person is considered disabled under the ADA if he: (1) has a disability, a "physical or mental impairment that substantially limits one or more of the major life activities"; (2) has a "record of such an impairment"; or (3) is "regarded [by the employer] as having such an impairment." 42 U.S.C. § 12102(2). Bullock alleged that he was regarded as being impaired in the major life activity of working.⁵

The Court concluded that Bullock had presented a triable issue of fact concerning whether Balis regarded Bullock as

⁵ Although the United States Supreme Court recently called into question whether working is a major life activity, Sutton v. United Airlines, 527 U.S. 471, 492 (1999) (dicta), neither party has raised the issue here. Accordingly, the Court will accept for the purposes of this motion that it is.

impaired in this major life activity. The parties and the Court focused their attention on whether Fox or Johnston knew Bullock had a disability when it made the decision to fire him; had they not, they could not have regarded him as disabled when they decided to fire him. Because the Court found a triable issue of fact existed concerning whether Balis had notice of Bullock's possible disability when it decided to fire him, the Court reasoned that a genuine issue of fact existed concerning whether Balis regarded Bullock as disabled.

The Court did not, however, scrutinize the extent to which Balis may have perceived Bullock's medical condition as limiting his ability to hold other jobs, an inquiry that is particularly relevant in an ADA claim that an employer regarded an employee as substantially limited in the major life activity of working.⁶ When bringing such claims, a plaintiff can only prevail if the defendant regarded him as unable to hold "either a class of jobs or a broad range of jobs in various classes." Sutton v. United

⁶ It should be noted, however, that this point was hardly central to Balis's Motion for Summary Judgment. Indeed, Balis cited the pertinent regulation only once in over seventy pages of briefing on its Motion for Summary Judgment. See Def.'s Mem. in Support of Mot. for Summary Judgment at 25. Nor did Balis offer any analysis of Bullock's position under the relevant factors. See id.; see also 29 C.F.R. § 1630.2(j)(3)(ii)(B). Thus, it could be said that Balis asks the Court to reconsider an issue that neither it, nor Balis, considered in the first place. That having been said, the Court will nonetheless scrutinize the record to determine whether its Order of December 18, 2000 was clearly erroneous.

Air Lines, 527 U.S. 471, 492-93 (1999); Murphy v. United Parcel Serv., Inc., 527 U.S. 516, 523-24 (1999); see also 29 C.F.R. § 1630.2(j)(3)(i). Merely being regarded as unable to perform the specific job from which one has been fired does not rise to the level of a disability under the ADA. Id. Courts should examine several factors when considering whether an individual is precluded from working in either a class of jobs or a broad range of jobs in various classes, including "the number and types of jobs utilizing similar training, knowledge, skills or abilities, within [the] geographical area [reasonably accessible to the individual], from which the individual is also disqualified." Id. § 1630.2(j)(3)(ii)(B). In order to survive Balis's Motion for Summary Judgment, therefore, Bullock must have presented a genuine issue of material fact regarding whether Balis regarded him as unable to hold either a class of jobs or a broad range of jobs in various classes.

In opposition to the instant Motion to Reconsider, Bullock offers one document that he feels demonstrates that Balis regarded him as disabled. Specifically, Bullock relies on the memorandum written by Johnston on February 27, 1997. That memorandum catalogued several of Johnston's complaints, including that: (1) "[Bullock] continues to make errors in submissions, does not prepare himself for client visits, fails to exercise self-control, and does not listen to clients"; and (2) "it takes

continuous follow-up to ensure [Bullock] is doing what he should do." The memorandum recommended that "[Bullock] should be considered for reassignment, probation, or whether his future is in Balis & Co., Inc." Importantly, the memorandum stated that "a possible role for [Bullock] in facultative [brokering] . . . could pose a problem due to his inattention to detail." Bullock has seized on this language in particular, arguing that it demonstrates that Johnston and Fox regarded him as disabled because they believed his inattention to detail made him generally unsuitable for both the treaty and facultative brokering positions.

Balis offers many reasons why the memorandum does not justify such a finding. First, Balis states that Bullock was only able to uncover one such document. This argument is entirely unpersuasive. When deciding whether a genuine issue of fact exists, a court must not consider the credibility or weight of the evidence presented, even if the quantity of the moving party's evidence far outweighs that of the nonmovant. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992). That Bullock produced only one document in opposition to Balis's Motion for Reconsideration does not preclude his surviving a motion for summary judgment.

Second, Balis suggests that the text of the memorandum itself could not possibly give rise to an inference that Balis

considered Bullock disabled. This argument is also unpersuasive. When deciding whether a genuine issue of fact exists, a court is required to believe the evidence of the nonmovant, and must draw all reasonable inferences in the light most favorable to the nonmovant. Anderson, 477 U.S. at 255. The recommendation contained in Johnston's memorandum is, at best, less than clear; it suggests that Bullock be considered for reassignment, probation or termination. The Court cannot find as a matter of law that this memorandum conclusively establishes that Balis considered Bullock capable of working as a reinsurance broker. Balis's argument to the contrary is further undermined by the fact that Johnston claims to have contemporaneously suggested to Fox that they fire Bullock. See Def.'s Reply Memo. in Support of Mot. to Recons. at 6 n.5.

Third, Balis points out that Bullock obtained employment in the reinsurance field after Balis fired him. This argument fails to take into consideration the relevant analysis in a "regarded as" disability claim; a person is disabled within the meaning of the ADA if an employer mistakenly believes that the person's actual, nonlimiting impairment substantially limits one or more major life activities. Sutton, 527 U.S. at 489. Because the inquiry is solely into whether Balis regarded Bullock as disabled, whether Bullock was in fact employable as a reinsurance broker has no bearing on the disposition of this case.

Fourth, Balis suggests that, because Johnston wrote the memorandum nearly one month before Bullock disclosed his possible disability, the memorandum cannot give rise to an inference that Balis regarded Bullock as disabled when it made the decision to fire him. Although Balis is correct that the memorandum was written on February 27, 1997, and Bullock disclosed his possible ADD on March 24, 1997, that fact does not completely rob the memorandum of its probative value. The memorandum clearly complains of Bullock's persistent lack of self-control and attention to detail. Bullock subsequently informed Fox and Johnston that he might have ADD. It is well known that ADD is characterized by severe bouts of inattention and impulsiveness. A jury could reasonably infer from the evidence that Fox and Johnston, after being notified that Bullock might have a disability, connected his performance problems with his medical condition. In other words, a jury could infer that Balis, which had not fired Bullock when his inattention and impulsiveness were mere motivational problems, decided to fire him when they became medical problems.⁷ That Johnston wrote the memorandum before Bullock disclosed his medical problem does not preclude a finding

⁷ Of course, Balis insists that it had already decided to fire Bullock, in which case the memorandum would not give rise to an inference that Balis had connected his work problems with his medical condition at the time it decided to fire him. As explained above, however, there is a triable issue of fact concerning the exact date on which Balis finally decided to fire Bullock.

that Balis regarded him as disabled when it made the decision to fire him; although the timing of the letter may decrease its probative value, it does not negate it entirely.

Finally, Balis argues that the letter's suggestion that Balis regarded Bullock as unsuited for two reinsurance brokering positions does not give rise to an inference that Balis considered him substantially limited in the major life activity of working. The gravamen of this argument is that the treaty and facultative brokering positions are so similar that, even if Bullock were unsuitable for both, he would not necessarily be unsuitable for an entire class of jobs or a broad range of jobs in various classes. Balis explains that the only difference between treaty and facultative brokers is the type of risk against which they insure their clients; treaty reinsurance covers an entire class of risks, while facultative reinsurance only one specific risk. For example, treaty insurance would cover all damages in excess of \$25,000 to any piece of a client's property, while facultative reinsurance would cover only property losses in excess of \$25,000 for damage to one specific building. Other than that difference, explains Balis, the two positions are fundamentally the same and require essentially the same skills and expertise.

In his Response to the instant Motion for Reconsideration, Bullock fails to address this point entirely. Instead, he simply

concludes that Johnston's memorandum "is evidence that the defendant saw plaintiff as unable to do a class of jobs." Plf.'s Resp. to Def.'s Mot. to Recons. at 10.⁸ Bullock makes no attempt to explain how facultative and treaty brokering constitute either an entire class of jobs, or a broad range of jobs within various classes. Nonetheless, Bullock did address this point in an earlier pleading, stating that "[t]here are only two kinds of brokering: treaty and facultative." Plf.'s Resp. to Def.'s Mot. for Summary Judgment at 15 n.7; see also Plf.'s Depo. at 54-62. Because evidence in the record indicates that there are only two types of reinsurance brokerage positions, Johnston's memorandum presents a genuine issue of fact regarding whether Balis regarded Bullock as disabled. In other words, there is a colorable argument that a perceived preclusion from the facultative and treaty brokering positions would amount to a perceived preclusion from the entire class of jobs, namely reinsurance brokering.⁹

Accordingly, there is a genuine issue of material fact

⁸ Bullock did not paginate his Response. By the Court's count, this statement appears on its tenth page.

⁹ Interestingly, Balis fails to address whether the facultative and treaty brokering jobs are the only two reinsurance brokering positions. Balis focuses its argument entirely on whether Bullock was regarded as substantially limited from working in a broad range of jobs in various classes, ignoring the issue of whether he was regarded as unable to perform an entire class of jobs. Although it may be that other types of reinsurance brokerage positions exist, the only evidence brought to the Court's attention indicates otherwise.

concerning whether Balis regarded Bullock as disabled. Because the Court finds that it did not commit a clear error of law or fact in its disposition of Balis's Motion for Summary Judgment, the instant Motion for Reconsideration will be denied.

IN THE UNITED STATES DISTRICT COURT
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| BALIS & CO., INC., | : | |
| a/k/a GUY CARPENTER & CO., INC. | : | No. 99-748 |

O R D E R

AND NOW, this day of March, 2001, in consideration of the Motion for Reconsideration filed by the Defendant, Balis & Co., Inc., a/k/a Guy Carpenter & Co., Inc. (Doc. No. 32), the Response of the Plaintiff, Edgar Q. Bullock, III, and the Reply thereto filed by the Defendant, it is **ORDERED** that the Motion for Reconsideration is **DENIED**.

BY THE COURT:

JAMES MCGIRR KELLY, J.